IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

WEDNESDAY, THE 29TH NOVEMBER 2006 / 8TH AGRAHAYANA 1928

CRL.A.No. 36 of 1998()

CC.614/1993 of JUDL.MAGISTRATE OF FIRST CLASS COURT-I, KANNUR

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APPELLANT/COMPLAINANT:

M/S.SOUMYA,BELLARD ROAD,
KANNUR I, REP. BY PROPRIETOR A.V.KUNHAMBU,
S/O.GOVINDAN,CHETTIPEEDIKA, KANNUR – 4.

BY ADV. SRI.K.G.BALASUBRAMANIAN

RESPONDENT/ACCUSED:

P.S.RADHAKRISHNAN,SOUTH BAZAR,
KANNUR – 2.

BY ADV. SRI.JOSHI N.THOMAS

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 29/11/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY, J.

Criminal Appeal.No.36 OF 1998 (A)

Dated this the 29th day of November, 2006

JUDGMENT

Appellant who is a wholesale merchant of clothes filed a complaint under Section 138 of the Negotiable Instruments Act contending that accused used to purchase clothes from his shop and a sum of Rs.77,682/- was due from the accused and he had issued a cheque for the said sum on 21.1.1993 and the cheque was dishonored for insufficiency of funds. Therefore complainant issued a lawyer notice dated 20.5.1993. Ext.P5 is the acknowledgment card and Ext.P6 is the reply notice. Since the amount was not paid complaint was filed. It is the contention of the accused that he was having transaction with the petitioner for a long period and a blank cheque was issued as security and that was filled up for a huge amount. He used to purchase clothes in bulk on credit and after sales it was repaid regularly. Ext.P6 reply notice stated that as on 4.1.1993, amount due was only Rs.65,682/-. In the reply notice it was also stated that balance amount can be paid in

instalments and according to the accused he paid the entire balance amount in instalments. A definite question was asked during cross examination of the complainant that whether he has accepted any amount after filing of the complaint and it was replied that he cannot answer without looking into the accounts. He had also stated that he was unable to say regarding when the accused took the materials on credit. He also stated that Ext.D1 letter shows that Rs.40,000/- was paid. He also admitted Exts.D3 and D4 receipts also shows part payments. The evidence of the complainant itself shows that there were series of transactions. It is argued by the counsel for the respondent that Rs.40,000/- is relating to another transaction. However, the complainant has clearly stated that he cannot say how much amount on this cheque was paid after filing of this case. Exts.D3 and D4 shows part amount due was received by the complainant after the notice. Even though there is a presumption under Section 139 of the Negotiable Instruments Act, the above presumption is only a rebuttable presumption. By cross examination of the complainant accused shattered the above presumption. Court also found

that the amount was filled up not by the person who signed the cheque. Oral evidence will show that cheque in question was given as security. It is the case of the accused that the balance amount of Rs.65,682/- due on 4.1.1993 and part of the amount was paid in instalments as prescribed in Ext.P6. This has to be coupled with the answer in cross examination that complainant cannot say how much amount was received after filing of the case. Therefore, view of the trial court that cheque was issued only as security is a possible view. When a possible view was taken by the trial court in acquitting the accused, no interference is required as held by the decision in **M.S.Narayana Menon @ Mani v. State of Kerala (2006 (6) S.S.C. 39)**. There is no merit in the appeal and hence this appeal is dismissed.

J.B.KOSHY, JUDGE

prp

J.B.KOSHY

Criminal.Appeal.36 OF 1998 (A)

JUDGMENT

29th November, 2006